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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/696,804	10/29/2003	John P. Pelmulder	2102402-914911	1295
26379	7590	03/02/2006	EXAMINER	
DLA PIPER RUDNICK GRAY CARY US, LLP			KOCZO JR, MICHAEL	
2000 UNIVERSITY AVENUE			ART UNIT	
E. PALO ALTO, CA 94303-2248			PAPER NUMBER	
			3746	
DATE MAILED: 03/02/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/696,804

Applicant(s)

PELMULDER ET AL.

Examiner

Michael Koczko, Jr.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6,9-14 and 21-24 is/are pending in the application.
- 4a) Of the above claim(s) 4-6 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 21-23 is/are allowed.
- 6) ☒ Claim(s) 1-3,9-14,24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>08-19-05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Applicant's arguments filed on January 27, 2006 have been fully considered but they are not persuasive.

Claims 1, 2, 3, 9 to 12, 14 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kayahara et al in view of Muller. Kayahara et al. disclose a pump assembly having a pump housing 2 defining a cavity, a roller 4 in the cavity, a motor 8 for moving the roller, and a cassette assembly 3 removably disposed in the cavity. The cassette assembly has a cassette housing with a compression surface 24, and a tube 17 abutting the compression surface. However, Kayahara et al. do not disclose that the compression tube is secured to the compression surface via a cylindrical flange. Muller discloses a pump having a compression surface 12 and a tube 5 having a cylindrical flange for securing the tube to the compression surface. The flange retains the tube in position and prevents the tube from coming out of alignment with the path of the roller. In view of this teaching, it would have been obvious to provide the tube 17 of Kayahara et al with a cylindrical flange for securing the tube to the compression surface. Regarding claim 24, any position wherein a roller compresses the compression tube is readable as a second rest position.

Applicant argues that "In contrast, Kayahara teaches roller 4 in constant contact with tube 17 (see Figs.)". Attention is directed to col. 3, ll. 48 to 62 which state that the motion of the roller has an inactive mode wherein "the elastic tube is freed from the normal pressing by the press roller". This allows for easy replacement of the cassette since the roller does not contact

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the tube. Also, the elastic tube will neither weaken in its restoring power, nor yield to fatigue deterioration.

Applicant further argues that it would not have been obvious to provide the tube 17 of Kayahara with a rib since the Kayahara apparatus “has connecting portion 28 and ring portion 29 already holding the tube ends in place”. While the connecting portion 28 and ring portion 29 hold the tube ends in place, they do not necessarily ensure that the intermediate tube portion stays in place.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kayahara et al in view of Muller, as applied to claim 12 above, and further in view of Seyler. Seyler discloses a pump with spring loaded arms which prevent an over-pressure condition from occurring which could burst the tube. In view of these teachings, it would have been obvious to spring load the arm 6 Kayahara et al.

Allowable Subject Matter

Claims 21 to 23 are allowed.

Conclusion

Claims 4 to 6 stand withdrawn from further consideration as being drawn to species non-elected without traverse.

This is an RCE of applicant's earlier application. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application.

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Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case.

See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

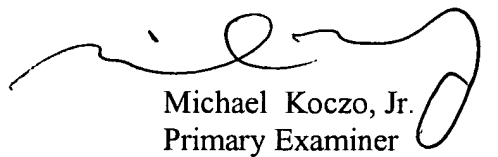
Any inquiry relating to patent applications in general should be directed to the Patent Assistance Center at 1-800-786-9199.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Koczo, Jr. whose telephone number is 571-272-4830. The examiner can normally be reached on M-Th; 7:00-3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy S. Thorpe can be reached at 571-272-4444. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Michael Koczo, Jr.
Primary Examiner
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